

CHAPTER NO. 476

SENATE BILL NO. 3212

By Kyle, Atchley, Kilby, Cohen

Substituted for: House Bill No. 3250

By Tindell, McMillan, Sargent, Newton, Hagood, Overbey, Lois DeBerry, Armstrong,
Pruitt, Langster, Bowers

AN ACT to enact the "Tennessee Charitable Gaming Implementation Law" and to amend Tennessee Code Annotated, Title 3; Title 4; Title 38; Title 39 and Title 48, relative to annual events operated for the benefit of §501(c)(3) organizations located in Tennessee pursuant to Article XI, Section 5 of the Constitution of Tennessee.

WHEREAS, Article XI, Section 5 of the Constitution of Tennessee provides:

The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:

- (1) Capital outlay projects for K-12 educational facilities; and
- (2) Early learning programs and after school programs.

Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for educational programs and purposes.

All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the general assembly for an annual event operated for the benefit of a §501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.

A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.

The state lottery authorized in this section shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate.

; and

WHEREAS, in November 2002, the citizens of Tennessee approved, by referendum, this section of the constitution providing authorization to the general assembly to enact a state lottery and to permit annual lottery events held for the benefit of §501(c)(3) charitable organizations; and

WHEREAS, in May, 2003, the general assembly enacted the Tennessee Education Lottery Implementation Law, Chapter 297 of the Public Acts of 2003, in response to the mandate of the citizens of this state; and

WHEREAS, this general assembly acknowledges that the mandate of the people of this great state extends beyond the state lottery to the authorization of annual events for the benefit of §501(c)(3) organizations by two-thirds vote of each house of this venerated body; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Charitable Gaming Implementation Law".

SECTION 2. Tennessee Code Annotated, Title 3, is amended by adding the following language as a new chapter:

Section 3-17-101. As used in this chapter, unless the context otherwise requires:

(1) "§501(c)(3) organization" means an entity which is exempt from federal income taxation under §501(a) of the Internal Revenue Code as an organization described in §501(c)(3) and, for the limited purposes of this chapter, an entity which has been in continuous and active existence for five (5) years immediately preceding the event date listed in an annual event application and has been exempt from federal income taxation under §501(a) of the Internal Revenue Code as an organization described in any subdivision of §501(c) but, prior to submission of an annual event application, has received exemption from federal taxation as an organization described in §501(c)(3);

(2) "Annual event" means an event:

(A) Authorized by two-thirds vote of all members elected to each house of the general assembly;

(B) Operated for the benefit of a §501(c)(3) organization located in Tennessee;

(C) Conducted with a single type of lottery game;

(D) Conducted on an event date; and

(E) Conducted at a location within a county where the organization maintains a physical presence;

(3) "Annual event application" means the application made to the secretary of state to operate an annual event;

(4) "Event date" means the day of an annual event. For the purposes of this item, "day" means a twenty-four-hour period beginning at twelve o'clock (12:00) midnight and ending at eleven fifty-nine post meridiem (11:59 p.m.);

(5) "Financial accounting" means a report of funds collected and expended for the annual event which is filed after completion of an annual event;

(6) "Person" means any individual, organization, trust, foundation, group, association, partnership, limited liability company, corporation, society, or any combination of them, or any other entity;

(7) "Secretary" means the secretary of state or the secretary of state's authorized representative; and

(8)(A) "Type of lottery game" means a game of chance played by any person eighteen (18) years of age or older including raffles, reverse raffles, cakewalks and cakewheels, but expressly prohibiting pulltabs, punchboards, bingo, instant bingo, video lottery, instant and on-line lottery games of a type operated by the Tennessee education lottery corporation, keno and games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like;

(B) For the purpose of this item, "bingo" means a specific game of chance in which participants use cards or paper sheets divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;

(C) For the purpose of this item, "cakewalks" and "cakewheels" mean a game of chance in which a participant is required to make a wager to select, or to receive, a prize with the winner determined by random selection through walking to music, colored space, a spinning wheel, drawing or any combination thereof;

(D) For the purpose of this item, "raffles" and "reverse raffles" mean a game of chance in which a participant is required to purchase a ticket, share, chance or similar record for a chance to win a prize, with the winner to be determined by random drawing;

(E) For the purpose of this item, "video lottery" means a lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for a cash or non-cash prize, or nothing, determined wholly or predominantly by chance;

(F) Any type of lottery game not expressly authorized in this item is prohibited.

Section 3-17-102. (a)(1) A §501(c)(3) organization seeking to operate an annual event for the benefit of such organization located in this state shall submit an annual event application to the secretary by twelve o'clock (12:00) noon Central Daylight Time (CDT) on April 20, 2004, and prior to January 1 in any subsequent year. Annual event applications shall not be considered submitted to the secretary until in the physical possession of the secretary as evidenced by the secretary's date and time endorsement on such documentation.

(2) A §501(c)(3) organization shall have been in continuous and active existence as a §501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application.

(3)(A) A §501(c)(3) organization, including chapters or affiliates operating under the same tax exemption, shall not operate more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(B)(i) An annual event shall be operated at a single location within a county in Tennessee where the §501(c)(3) organization has a physical presence, as disclosed pursuant to §3-17-103(a)(2)(A); provided that a §501(c)(3) organization may operate an annual event on the same day in one (1) county where it has a physical presence in each grand division of the state as described in §§ 4-1-201 - 4-1-204. Such location, or locations, shall be listed as the location of the annual event in the annual event application pursuant to §3-17-103(a)(16).

(ii) Nothing in this subsection (a)(3)(B) shall be construed to limit the ability of an organization to sell tickets, shares, chances or similar records for an authorized annual event in any political subdivision of this state.

(iii) No more than two (2) annual events per calendar month shall be held at the same location in each county during any annual event period. For the purpose of this item, "location" means a single physical site in a county identified by an address or unique descriptive feature.

(4) A §501(c)(3) organization may operate an annual event in conjunction with one (1) or more §501(c)(3) organizations under the following circumstances:

(A) Each §501(c)(3) organization files an independent annual event application, including, but not limited to, the appropriate application fee, in accordance with the provisions of this chapter;

(B) Each §501(c)(3) organization submits, with the annual event application, a joint statement of authorization indicating the intention to conduct a joint annual event and listing all organizations participating in such joint event; and

(C) Each §501(c)(3) applicant is in compliance with the provisions of this chapter and is eligible for inclusion on the omnibus list.

If one (1) or more §501(c)(3) organizations are not eligible for inclusion on the omnibus list, or fail to timely file an annual event application, all applicants for a joint annual event shall be excluded from the omnibus list. No provision of this subdivision shall be construed as authorizing a §501(c)(3) organization participating in a joint event to operate, participate or conduct, jointly or otherwise, more than one (1) annual event within any twelve-month period beginning July 1 and ending June 30.

(5)(A) Except as otherwise provided in this subdivision, a §501(c)(3) organization authorized to conduct an annual event pursuant to the provisions of this chapter shall not employ, contract with, or otherwise utilize the services of any person, including, but not limited to, any management company, consultant or other entity, to manage, conduct or operate any aspect of an annual event. An authorized annual event shall be managed, conducted and operated only by bona fide directors, officers or employees of a §501(c)(3) organization who:

(i) Manage, conduct or operate only one (1) such annual event in any twelve-month period beginning on July 1 and ending on June 30 each year for any §501(c)(3) organization; and

(ii) Receive no compensation for duties associated with the annual event from the proceeds of the annual event except compensation otherwise due to such person in the normal course of business. In no event shall such person's normal compensation, or any other form of compensation or benefit, including, but not limited to, any bonus payment or any other form of supplemental payment, be based upon or determined by reference to a percentage of the proceeds derived from the operation of the annual event, the number of people participating in the annual event or any other factor related to the annual event.

Unpaid volunteer personnel, including members of a §501(c)(3) organization, may be utilized by a §501(c)(3) organization to manage, conduct or operate an annual event.

(B)(i) Nothing in this subdivision or §39-17-654(b) shall be construed as prohibiting a §501(c)(3) organization from purchasing, leasing or accepting donations of prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event; provided that the compensation paid for such purchases or leases shall not be at a price greater than fair market value and shall not be based on a percentage of the proceeds of an annual event or by any other contingency agreement based on the proceeds of an annual event.

(ii) No §501(c)(3) organization shall purchase or lease prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event from any director, officer or employee of the §501(c)(3) organization.

(iii) No §501(c)(3) organization shall purchase, lease or accept donations of prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies necessary to conduct an authorized annual event from any person or entity who has had a final civil judgment in excess of twenty-five thousand dollars (\$25,000) rendered against such person or entity and such judgment has not been satisfied, or which has an officer, board member, substantial partner, substantial stockholder or agent who has had a civil judgment rendered against such person or entity and such judgment has not been satisfied. For the purpose of this subsection (a)(5)(B)(iii), "substantial stockholder" or "substantial partner" means a stockholder of a corporation or partner in the entity who owns an interest of ten percent (10%) or more of the partnership or of the capital stock of a corporation. A §501(c)(3) organization shall request an affidavit from any such person or entity affirming compliance with the provisions of this subsection (a)(5)(B)(iii) and such person or entity shall certify under oath and subject to criminal penalties including perjury that such person or entity is in compliance with the provisions of this subsection (a)(5)(B)(iii). Notwithstanding any provision of this chapter to the contrary, a §501(c)(3) organization that violates the provisions of this subsection (a)(5)(B)(iii) shall only be subject to a civil penalty not to exceed five hundred dollars (\$500) for each violation. A §501(c)(3) organization that violates the provisions of this subsection (a)(5)(B)(iii) shall not be subject to disqualification from submitting future annual event applications.

(6)(A) Except as provided in subdivision (B), a §501(c)(3) organization authorized to conduct an annual event pursuant to the provisions of this chapter shall return all of the gross proceeds, less any amount expended pursuant to §3-17-102(a)(5)(B), to the organization for the purposes or programs described in §3-17-103(a)(19), but in any event, a §501(c)(3) organization shall return at least twenty-five percent (25%) of gross proceeds to the organization for the purposes or programs described in §3-17-103(a)(19).

(B) A §501(c)(3) organization that fails to return at least twenty-five percent (25%) of gross proceeds from the annual event to the purposes or programs described in §3-17-103(a)(19) in any year shall file notice with the secretary on a form prescribed by the secretary. If, in the sound discretion of the secretary, the organization was not at fault in failing to return the required percentage, the organization shall be allowed to file an annual event application for the next annual event period; provided that if an organization fails to return the required percentage in

two (2) consecutive annual event periods, the organization shall be permanently disqualified from filing annual event applications.

(b) The secretary shall review all annual event applications timely submitted and shall transmit an omnibus list of qualifying applicants to the Clerk of the Senate and the Clerk of the House of Representatives in an electronic format, as is required by the respective clerks, on or before May 4, 2004, and by March 1 in any subsequent year. Such omnibus list shall include, at a minimum, the name of the §501(c)(3) organization, the name of the event, the type of lottery game, the event date for the event and the location, or locations, of the event. Such omnibus list shall list §501(c)(3) organizations alphabetically by county in which the annual event is proposed to be operated.

(c) Upon authorization by the general assembly, the Clerk of the House last approving such authorization shall transmit a copy of such authorization to the secretary and to each district attorney general. The secretary shall transmit such authorization to each authorized §501(c)(3) organization at the mailing address listed in such organization's annual event application; provided that in the case of an organization with multiple chapters, branches or affiliates in Tennessee, such authorization shall be transmitted only to the primary mailing address of the applicant. Such authorization shall be posted on the web site of the secretary with such additional information as the secretary deems appropriate. At a minimum, the secretary shall post the name of the §501(c)(3) organization, the name of the event, the type of lottery game, the event date for the event and the location, or locations, of the event.

(d)(1)(A) An authorized annual event shall be held within fourteen (14) calendar days of the event date listed in the annual event application; provided that nothing herein shall be construed as allowing two (2) annual events in any one-year period or as allowing a §501(c)(3) organization to operate an annual event at authorized multiple locations on separate days.

(B) A §501(c)(3) organization shall give notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted one hundred thirty (130) days prior to the event date listed in the annual event application; provided that if the event date is within one hundred thirty (130) days from notification of authorization to conduct an annual event, the §501(c)(3) organization shall immediately, upon receipt of such notification and prior to the commencement of selling any tickets, shares, chances or similar records, give notice to the chief law enforcement officer of each county or municipality in which the annual event shall be conducted. In accordance with subsection (d)(1)(A), if the actual event date is different than the event date listed in the annual event application, a §501(c)(3) organization shall give an additional notice to each chief law enforcement officer of the county or municipality in which the annual event shall be conducted prior to conducting the annual event. For the purposes of this item, "notice" means a letter sent by certified mail, or by actual physical delivery of a letter to the chief law enforcement officer or such officer's designee, containing, at a minimum, the following information:

(i) The name of the §501(c)(3) organization;

(ii) The name of the event;

(iii) The location of the event, including the physical address where the annual event will be conducted;

(iv) The type of lottery game to be conducted;

(v) The event date for the event listed in the annual event application;

(vi) If applicable, the actual event date for the annual event if different than the event date listed in the annual event application;

(vii) If applicable, additional locations of the event, including the physical address where the annual event will be conducted, if such event will be operated at authorized multiple locations;

(viii) The name, address and telephone number of the §501(c)(3) organization's chair, president or chief administrative officer; and

(ix) If applicable, the name, address and telephone number of the person responsible for the operation of the annual event for the §501(c)(3) organization, if different than the organization's chair, president or chief administrative officer.

(2) Except as provided in subdivision (3), upon receipt of authorization from the secretary pursuant to subsection (c), a §501(c)(3) organization may conduct all necessary activities for such event, including, but not limited to, planning, advertising, promoting, printing of materials and tickets, shares, chances or similar records and the transportation of such records and other devices.

(3) A §501(c)(3) organization, or any person authorized pursuant to §3-17-102(a)(5)(A) on behalf of the §501(c)(3) organization, may sell tickets, shares, chances or similar records for one hundred twenty (120) days immediately preceding the event date listed in the application and for any period after the event date listed in the annual event application but prior to the actual date of the annual event if such actual date is after the event date in accordance with the provisions of subdivision (1). No person shall sell tickets, shares, chances or similar records outside of the period authorized by this subdivision (d)(3).

(e)(1) Within ninety (90) days following the event date listed in the annual event application, a financial accounting as required pursuant to the provisions of §3-17-105 shall be submitted by the organization to the secretary.

(2) A financial accounting shall not be considered submitted to the secretary until in the physical possession of the secretary as evidenced by the secretary's date and time endorsement on such documentation.

(3) The secretary shall post such accounting, or a synopsis of such accounting, on the web page of the secretary.

Section 3-17-103. (a) All annual event applications shall be submitted to the secretary by twelve o'clock (12:00) noon Central Daylight Time (CDT) on April 20, 2004, and prior to January 1 in any subsequent year, and shall include:

(1) The name of the §501(c)(3) organization and the purpose for which it was organized;

(2)(A) The physical address, in Tennessee, of the §501(c)(3) organization; provided that if the organization has multiple chapters or affiliates in Tennessee operating under the same tax exemption, the physical addresses of such multiple locations. For the purposes of this chapter, a post office box, or similar address at a mail or package delivery service, shall not be considered a physical address; and

(B) If the principal office of the §501(c)(3) organization is outside Tennessee, the physical address of such principal office;

(3)(A) The mailing address, in Tennessee, of the §501(c)(3) organization; for the purposes of this chapter, such mailing address shall serve as the primary mailing address of the applicant; provided that if the organization has multiple chapters or affiliates in Tennessee operating under the same tax exemption, the mailing addresses of such multiple locations; and

(B) If the principal office of the §501(c)(3) organization is outside Tennessee, the mailing address of such principal office;

(C) The §501(c)(3) organization shall designate a named person who is a citizen of Tennessee to receive process at the primary mailing address of the applicant. The name of such person shall be listed in the annual event application;

(4)(A) The telephone number, in Tennessee, of the §501(c)(3) organization or its chair, president or chief administrative officer; and

(B) If the principal office of the §501(c)(3) organization is outside Tennessee, the telephone number of such principal office;

(5) The place where, and the date when, the organization was legally established and documentation from the Internal Revenue Service recognizing the §501(c)(3) organization's tax exempt status. Such documentation shall be supported by an affidavit from the §501(c)(3) organization's chair, president or chief administrative officer affirming that the organization's §501(c)(3) status has not been revoked;

(6) A copy of organizational documents and any other documents that prove to the satisfaction of the secretary that the §501(c)(3) organization has been in continuous and active existence as a §501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed

in the annual event application. The secretary may promulgate rules and regulations as to the type, and quantity, of documentation necessary for proof of continuous and active existence. Such documentation shall be supported by an affidavit signed by the §501(c)(3) organization's chair, president or chief administrative officer and secretary affirming that the organization has been in continuous and active existence in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application;

(7) For §501(c)(3) organizations formed after October 9, 1969, a copy of the organization's Internal Revenue Service Form 1023, including any attached schedules. If a §501(c)(3) organization has requested a duplicate copy of such Form 1023 from the Internal Revenue Service, an affidavit from the §501(c)(3) organization's chair, president or chief administrative officer affirming that such organization has, in the past, filed a Form 1023 with the Internal Revenue Service and, subsequently, requested a duplicate copy of such Form 1023 from the Internal Revenue Service. Upon receipt of such Form 1023, the §501(c)(3) organization shall file a copy with the secretary; provided that nothing in this subsection (a)(7) shall be construed to exclude a §501(c)(3) organization from inclusion on the omnibus list so long as an affidavit in accordance with this subsection (a)(7) is filed with the annual event application;

(8)(A) For annual event applications submitted prior to January 1, 2005:

(i) A copy of the §501(c)(3) organization's last five (5) annual reports filed with the Internal Revenue Service (Form 990, 990-EZ, or 990-PF) and any attached schedules for the five-year period immediately preceding the annual event application; or

(ii) If such organization has not filed any such annual reports with the Internal Revenue Service or has not filed five (5) consecutive annual reports for the five-year period immediately preceding the annual event application, an affidavit from the §501(c)(3) organization's chair, president or chief administrative officer affirming that the organization has not filed any annual reports or has not filed five (5) consecutive annual reports and shall begin to file annual reports as required by the provisions of this chapter. In addition, any such organization shall submit copies of any annual reports filed with the Internal Revenue Service within the five-year period preceding the application;

(B) For annual event applications submitted between January 1, 2005, and December 31, 2009:

(i) A copy of the §501(c)(3) organization's last five (5) annual reports filed with the Internal Revenue Service (Form 990, 990-EZ, or 990-PF) and any attached schedules for the five-year period immediately preceding the annual event application; or

(ii) If such organization has not filed five (5) consecutive annual reports for the five-year period immediately preceding the annual event application, a copy of the §501(c)(3) organization's

annual report filed with the Internal Revenue Service (Form 990, 990-EZ, or 990-PF) for the preceding year and any attached schedules and copies of any other annual reports filed with the Internal Revenue Service within the five-year period preceding the application;

(C) For annual event applications submitted on and after January 1, 2010, a copy of the §501(c)(3) organization's last five (5) annual reports filed with the Internal Revenue Service (Form 990, 990-EZ, or 990-PF) and any attached schedules for the five-year period immediately preceding the annual event application;

(9) A waiver of privacy rights, on a form provided by the secretary, which will allow posting of documents on the secretary's web site and inspection by any member of the public of tax forms and documents filed pursuant to this chapter;

(10) The names and addresses of the officers, directors, trustees, and the principal salaried executive staff officer of the §501(c)(3) organization;

(11) A statement that no officer, director, trustee, or the principal salaried executive staff officer of the §501(c)(3) organization has been convicted of a violation of §39-14-103, §39-14-104, §39-14-105, §39-16-702, §39-16-703, Title 39, Chapter 17, Parts 5 or 6 or a similar offense in another jurisdiction;

(12) A copy of the minutes from the meeting of the §501(c)(3) organization indicating the intent to operate an annual event if authorized by the general assembly. Such minutes shall reflect an affirmative vote by a majority of the directors or officers of the organization to operate such annual event. In lieu of a copy of the minutes, an affidavit signed by all directors or officers of the organization indicating the intent to operate an annual event if authorized by the general assembly;

(13) The name of the annual event;

(14)(A) The single type of lottery game to be conducted and a description of the game; and

(B) The estimated number of tickets, shares, chances or other similar records to be offered and the actual dollar amount at which a ticket, share, chance or other similar record shall be sold;

(15) The event date; provided that the event date shall be selected within a twelve-month period beginning July 1 following the application deadline and ending the next June 30;

(16) The location, or locations, of the annual event including, at a minimum, each county in which the annual event will be operated in accordance with §3-17-102(a)(3)(B)(i).

(17) If applicable, the event date of the last annual event held, or to be held, by the organization;

(18) If applicable, in accordance with §3-17-102(a)(4)(B), a joint statement of authorization indicating the intention to conduct a joint annual event and listing all organizations participating in such joint event. For the purposes of this subdivision, the applicant shall list each organization which will participate in the joint event and shall include each such organization's physical address and mailing address in Tennessee;

(19) The charitable, religious, educational, scientific or other humanitarian purposes or programs for which the funds derived from the annual event shall be used;

(20) The names of the individuals or officers of the organization who will have final responsibility for the custody of the funds derived from the annual event;

(21) The names of the individuals or officers of the organization responsible for the final distribution of the funds derived from the annual event; and

(22) The appropriate application fee.

(b) The secretary shall develop a uniform application form for annual event applications. The secretary is encouraged to utilize, to every extent possible, web-based forms and procedures for annual event applications.

(c)(1) An application fee shall be paid at the time of submission of an annual event application. Annual event applications shall not be accepted by the secretary unless accompanied by the appropriate application fee.

(2) The secretary shall establish a reasonable fee for annual event applications not to exceed seven hundred dollars (\$700). Fees collected under the provisions of this chapter shall be used by the secretary and the Tennessee Bureau of Investigation to defray the cost of administering this chapter, including, but not limited to, the cost of investigations pursuant to §3-17-112.

(3) Annual event application fees are non-refundable.

(d) All annual event applications shall be signed by the §501(c)(3) organization's chair, president or chief administrative officer and the preparer of the application. Such persons shall certify under oath and subject to criminal penalties including perjury that the information contained in the annual event application is true and accurate.

Section 3-17-104. (a) The secretary shall examine each annual event application submitted under this chapter for inclusion on the omnibus list. An annual event shall be included on the omnibus list if:

(1) All annual event application filing requirements of § 3-17-103 are met;

(2) The secretary determines that the §501(c)(3) organization has been recognized by the Internal Revenue Service as a tax exempt §501(c)(3)

organization and that such exemption is valid at the time of filing an annual event application;

(3) The secretary determines that the §501(c)(3) organization has been in continuous and active existence as a §501(c)(3) organization located in Tennessee for at least five (5) years immediately preceding the event date listed in the annual event application; and

(4) The type of lottery game is authorized by the provisions of this chapter and Article XI, Section 5 of the Constitution of Tennessee.

(b) The secretary shall establish rules and regulations concerning the acceptance of amendments to annual event applications otherwise consistent with the provisions of this chapter including, but not limited to, amendments concerning conflicting locations for an annual event and conflicting annual event dates.

(c) The secretary shall include all qualified annual event applicants on an omnibus list to be transmitted to the general assembly pursuant to the provisions of §3-17-102(b).

(d)(1) No extension of time shall be granted for submission, or completion, of an annual event application after the application deadline has passed for the appropriate annual event period.

(2) In accordance with the provisions of §3-17-102(a)(1), the secretary shall have no authority to accept, and shall not accept, an annual event application, or an amendment thereto, submitted after the application deadline has passed for the appropriate annual event period.

(e) An annual event application may be permanently withdrawn prior to the date of transmission of the omnibus list to the general assembly; provided that once withdrawn, the §501(c)(3) organization may not resubmit an annual event application for the annual event period in which the previously submitted application was withdrawn.

(f) If an annual event application is not included in the omnibus list, the secretary shall transmit notification to the applicant stating the basis for such non-inclusion. The secretary shall transmit such notice to the applicant at the primary mailing address listed in such applicant's annual event application.

(g) An applicant whose application is not included in the omnibus list may request in writing that the secretary reconsider the determination; provided that such written request is filed with the secretary within ten (10) calendar days from the date of notification of non-inclusion. The secretary shall reconsider such determination and issue a final decision within ten (10) calendar days of receipt of such written request for reconsideration.

(h)(1) Review of final decisions of the secretary shall be heard by the Tennessee Claims Commission in accordance with rules and regulations promulgated by the commission. It is the intent of the general assembly that reviews pursuant to this subsection shall be heard on an expedited basis. The venue for any such review shall be in the middle division of the Tennessee Claims Commission.

(2) A petition for review shall be filed not later than ten (10) calendar days after issuance of the final decision by the secretary. Copies of the petition shall be served upon the secretary and the attorney general and reporter.

(3) The review shall be conducted by the claims commission on the small claims docket pursuant to § 9-8-403 and shall be confined to the record of proceedings before the secretary.

(4) The claims commission shall issue written findings of fact and conclusions of law as to whether the secretary's decision was:

(A) Clearly erroneous; or

(B) Arbitrary and capricious.

(5) The claims commission shall have no authority to award monetary damages in any review made pursuant to this section.

Section 3-17-105. (a) An organization authorized by the general assembly to operate an annual event shall, within ninety (90) days following the event date listed on the annual event application, file a financial accounting with the secretary in accordance with the provisions of this section.

(b) For events grossing thirty thousand dollars (\$30,000) or less, the organization shall file a financial accounting, on a form prescribed by the secretary, showing the following:

(1) The gross amount of money received from the annual event;

(2) The amount of money expended by the organization, including, for amounts exceeding one hundred dollars (\$100), the name and address of the payee, the category of expense and the amount expended;

(3) The amount of money disbursed, or to be disbursed, to the charitable programs or purposes of the §501(c)(3) organization including, but not limited to, sufficient documentation indicating that all of the gross proceeds, less any amount expended pursuant to §3-17-102(a)(5)(B), have been used, or have been earmarked, for the purposes or programs described in §3-17-103(a)(19); and

(4) A list of all prize winners, including their names and addresses, of cash, goods or services valued at more than fifty dollars (\$50.00) and the prize received.

(c) For events grossing more than thirty thousand dollars (\$30,000), the organization shall file an audited financial statement prepared by an independent certified public accountant or an independent public accountant, on a form prescribed by the secretary, showing the following:

(1) The gross amount of money received from the proceeds of the annual event;

(2) The amount of money disbursed, or to be disbursed, to the charitable programs or purposes of the §501(c)(3) organization including, but not limited to, sufficient documentation indicating that all of the gross proceeds, less any amount expended pursuant to §3-17-102(a)(5)(B), have been used, or have been earmarked, for the purposes or programs described in §3-17-103(a)(19);

(3) An itemized list, including the name and address of the payee, of the amounts spent for all expenses; provided that individual expenses of one hundred dollars (\$100) or less may be listed as miscellaneous expenses, by category, so long as the aggregate sum of all miscellaneous expenses is less than five thousand dollars (\$5,000); and

(4) A list of all prize winners, including their names and addresses, of cash, goods or services valued at more than fifty dollars (\$50.00) and the prize received.

(d) In the case of an annual event held jointly by two (2) or more §501(c)(3) organizations as provided in §3-17-102(a)(4), the financial accounting filed pursuant to this section shall be based on the gross amount of money jointly received and shall, in addition to the applicable requirements of subsection (b) or (c), show the amount disbursed, or to be disbursed, to each participating §501(c)(3) organization. Such organizations may file the same financial accounting provided that the signature requirements of subsection (e) are satisfied.

(e) For events grossing thirty thousand dollars (\$30,000) or less, all financial accountings required by this section shall be signed by the chair, president or chief administrative officer of the §501(c)(3) organization and the preparer of the report or, if the chair, president or chief administrative officer is the preparer of the report, by such person and by one additional officer of the §501(c)(3) organization. For events grossing more than thirty thousand dollars (\$30,000), all financial accountings required by this section shall be signed by the chair, president or chief administrative officer of the §501(c)(3) organization and the preparer of the report. Such persons shall certify under oath and subject to criminal penalties including perjury that the information contained therein is a true and accurate accounting of the funds received and expended during operation of the annual event.

(f) A §501(c)(3) organization that has received authorization to conduct an annual event, or conduct an annual event at multiple locations, may, at the discretion of the organization, cancel an annual event or, if authorized at multiple locations, cancel a location of the annual event; provided that:

(1) An affidavit from the §501(c)(3) organization's chair, president or chief administrative officer is filed with the secretary and the chief law enforcement officer of the county or municipality stating that the annual event, or a location of a multiple location annual event, is cancelled, and the nature of the cancellation, within ten (10) calendar days of the decision to cancel the event or location. Such cancellation shall be posted on the web site of the secretary. Notwithstanding any provision of this chapter to the contrary, if a single location annual event is cancelled no other notice to the chief law enforcement officer of the county or municipality or a financial accounting shall be required except as provided in subdivision (2) of this subsection; if a location of a multiple location annual event

is cancelled, no other notice to the chief law enforcement officer of the county or municipality of the cancelled location is required; and

(2) If cancellation occurs after the commencement of sale of tickets, shares, chances or similar records, a full refund is offered for at least ninety (90) days following cancellation; provided that if a location of a multiple location annual event is cancelled, only tickets, shares, chances or similar records for the cancelled location shall be required to be offered for at least ninety (90) days following cancellation. A §501(c)(3) organization shall give reasonable public notice of cancellation in the area in which tickets, shares, chances or similar records were sold including the terms of the refund offered. Such terms shall be included in the affidavit required pursuant to subdivision (1) of this subsection including a mailing or physical address to submit a refund claim and, within ninety (90) days of cancellation of an annual event, or a location of a multiple location annual event, the organization shall file an accounting of tickets sold, refunds made and ticket proceeds remaining with the secretary and the chief law enforcement officer of the county or municipality. Any remaining ticket proceeds shall be used in furtherance of the charitable purposes or programs described in §3-17-103(a)(19) of the organization's annual event application.

No annual event cancelled pursuant to the provisions of this subsection may be conducted during the annual event period. No multiple location annual event for which a location is cancelled pursuant to the provisions of this subsection may be conducted at such cancelled location during the annual event period.

Section 3-17-106. Applications, reports, and all other documents and information required to be filed under this chapter, or by the secretary, shall be public records in the office of the secretary. The secretary, in the secretary's discretion, may compile, summarize, publish, or otherwise release to the public any information contained in applications and any other documents filed with or received by the secretary under this chapter.

Section 3-17-107. (a) Every §501(c)(3) organization subject to the provisions of this chapter and the rules and regulations prescribed by the secretary, shall keep:

(1) True and accurate fiscal records, including, but not limited to, all income and expenses; and

(2) True and accurate records regarding the conduct of any annual event, including records of any documents, information, notices, or applications required to be prepared or filed pursuant to this chapter. Unless otherwise provided, such records shall be retained for a period of at least five (5) years after the event date to which they relate.

(b) Upon request and at a reasonable time and place within Tennessee, such records, as well as any other records regarding annual events within this state, shall be made available to the secretary, the charitable gaming oversight committee on the Tennessee education lottery corporation, the attorney general and reporter, or an appropriate district attorney general for inspection.

Section 3-17-108. (a) No ticket, share, chance or similar record shall be purchased by and no prize or award shall be paid to:

(1) Any member of the board of directors of a §501(c)(3) organization authorized by the general assembly to operate an annual event for such organization;

(2) Any officer or employee of a §501(c)(3) organization authorized by the general assembly to operate an annual event for such organization; or

(3) To any member of the immediate family of any person described in subsections (a)(1) or (a)(2) residing as a member of the same household in the principal place of residence of any such person.

(b)(1) No ticket, share, chance or similar record shall be purchased by, and no prize or award shall be paid to, any member of the general assembly during such member's term of office as a member of the general assembly.

(2) No ticket, share, chance or similar record shall be purchased by, and no prize or award shall be paid to, the secretary or any employee of the secretary during the secretary's term of office and such employee's term of employment with the secretary.

(c) No ticket, share, chance or similar record for any specific authorized annual event shall be purchased by, and no prize or award shall be paid to:

(1) Any person providing prizes, facilities, locations, advertising services, printing services, telephone services and any records, devices or other supplies to conduct such specific authorized annual event;

(2) Any officer, employee, agent or subcontractor of any person described in subsection (c)(1); or

(3) Any member of the immediate family of any person described in subsections (c)(1) or (c)(2) residing as a member of the same household in the principal place of residence of any such person.

(d) For the purposes of this section, "immediate family" means a spouse, child, step-child, brother, sister, son-in-law, daughter-in-law, parent or grandparent.

Section 3-17-109. (a) The ticket, share, chance or other similar record shall bear on its face the name of the §501(c)(3) organization on whose behalf the event is being conducted.

(b) All cash prizes or awards exceeding fifty dollars (\$50.00) shall be paid by check from a designated account of the organization to a named individual. In the case of non-cash prizes or awards, payment shall be in the form of goods or services and, if applicable, by an appropriate legal instrument, including, but not limited to deeds, titles and gift certificates. Checks or other legal instruments payable to "cash" or "bearer" are expressly prohibited.

(c)(1) For single location annual events, the total value of all prizes awarded per annual event shall not exceed two hundred fifty thousand dollars (\$250,000); provided that such limitation shall not apply to prizes of real property.

(2) For multiple location annual events, the total value of all prizes awarded per annual event location shall not exceed one hundred fifty thousand dollars (\$150,000); provided that such limitation shall not apply to prizes of real property.

Section 3-17-110. (a) Except as provided in subsection (b), any person who violates any provision of this chapter, or is convicted of a violation of §39-16-702, §39-16-703 or Title 39, Chapter 17, Parts 5 and 6 shall be permanently disqualified from submitting an annual event application.

(b) Any person who fails to timely file a financial accounting pursuant to § 3-17-105, or who is convicted of failing to timely file a financial accounting pursuant to §39-17-655(a)(2), shall be disqualified from submitting an annual event application for a period of five (5) years.

Section 3-17-111. The general assembly, by enacting this act, intends to preempt any other regulation of the area covered by the provisions of this act. No political subdivision or agency may enact or enforce a law, ordinance, resolution or regulation that regulates or prohibits any conduct in the area covered by this act.

Section 3-17-112. (a) The secretary shall have authority to periodically inquire into the operations of annual events to determine compliance with the provisions of this chapter. The secretary may assess a civil penalty against any person, or a §501(c)(3) organization, not to exceed fifty thousand dollars (\$50,000) for a violation of this chapter or any rule or regulation adopted pursuant to the provision of this chapter. Any hearing on the imposition of a civil penalty pursuant to the provisions of this section shall be in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) The Tennessee Bureau of Investigation shall have jurisdiction over, and shall investigate, violations of §§ 39-17-651 - 39-17-657 and reports of official misconduct concerning the provisions of this chapter in a manner consistent with the provisions of Title 38, Chapter 6, Part 1.

(c) The provisions of subsection (a) shall apply to annual event applications submitted to the secretary for annual events to be conducted on and after July 1, 2005.

Section 3-17-113. (a) The secretary of state may establish, by duly promulgated rules and regulations, the procedures and criteria for requiring and obtaining criminal background checks for the following persons who will operate the annual event for a §501(c)(3) organization: officers, directors, trustees and the principal salaried executive staff officer. No background check shall be conducted on any such person unless the secretary finds good cause, based upon objective criteria, that the information contained in the annual event application, or supporting documentation, is ambiguous, false or insufficient; provided that a background check may be required for good cause if based upon reliable information from a law enforcement agency. The secretary of state may

utilize the Tennessee Bureau of Investigation or the Federal Bureau of Investigation to conduct criminal background checks.

(b) Procedures and payments of costs associated with criminal background checks shall be governed by §§ 38-6-103 and 38-6-109. The §501(c)(3) organization that has filed an annual event application shall be responsible for payment for all criminal background checks required by this section. The secretary of state shall not pay for any criminal background check required by this section.

(c) Criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation.

(d) The secretary of state shall be immune from suit for declining to approve the conducting of an annual event based upon criminal background information received pursuant to this act section.

(e)(1) In the event that the secretary establishes procedures and criteria for requiring and obtaining criminal background checks, such checks shall not be performed upon officers, directors or trustees who receive no compensation for their duties associated with the §501(c)(3) organization.

(2) In the event that the secretary establishes procedures and criteria for requiring and obtaining criminal background checks, such provisions shall only apply to annual event applications for the operation of annual events to be conducted on and after July 1, 2005.

SECTION 3. Tennessee Code Annotated, Section 39-17-502, is amended by adding the following language as a new subsection:

(c) It is an affirmative defense to prosecution under this section, which must be proven by a preponderance of the evidence, that a person reasonably and in good faith relied upon the representations of a gambling promoter that a gambling activity was lawful because it was an authorized annual event pursuant to Title 3, Chapter 17, Part 1. It is not an affirmative defense to prosecution under this section that a person engaged in a gambling activity that was not an authorized type of lottery game pursuant to Title 3, Chapter 17, Part 1.

SECTION 4. Tennessee Code Annotated, Section 39-17-505(a), is amended by adding the following language as a new subdivision:

(4) It is not an offense for a person to knowingly own, manufacture, possess, buy, sell, rent, lease, store, repair, transport, print or make any gambling device or record if such device or record is for the purpose of conducting an annual event pursuant to the provisions of Title 3, Chapter 17, Part 1 and Title 39, Chapter 17, Part 6.

SECTION 5. Tennessee Code Annotated, Section 39-17-506(a)(1), is amended by inserting the language "or the sale of tickets, shares, chances or similar records for an annual event pursuant to the provisions of Title 3, Chapter 17, Part 1 and Title 39, Chapter 17, Part 6" between the language "the Tennessee education lottery corporation" and the language "; or".

SECTION 6. Tennessee Code Annotated, Section 39-17-506(a), is amended by adding the following language as a new subdivision:

(3) An annual event operated pursuant to Title 3, Chapter 17, Part 1 and Title 39, Chapter 17, Part 6.

SECTION 7. Tennessee Code Annotated, Section 39-17-601, is amended by adding the following language as a new, appropriately designated item:

(_) "Annual event" means an event:

(A) Authorized by two-thirds vote of all members elected to each house of the general assembly;

(B) Operated for the benefit of a §501(c)(3) organization located in Tennessee;

(C) Conducted with a single type of lottery game, as defined in §3-17-101(8);

(D) Conducted on an event date, as defined in §3-17-101(4); and

(E) Conducted at a location within a county where the organization maintains a physical presence;

SECTION 8. The Tennessee Code Commission is requested to reserve §§ 39-17-611 - 39-17-650.

SECTION 9. Tennessee Code Annotated, Title 39, Chapter 17, Part 6, is amended by adding the following language as new sections:

Section 39-17-651. (a) It is an offense for any person to knowingly sell annual event tickets, shares, chances or similar records for a period longer than the period authorized pursuant to the provisions of §3-17-102(d)(3).

(b) A violation of this section is a Class C misdemeanor; provided that the maximum fine shall be one thousand dollars (\$1,000) per day in excess of the authorized period.

Section 39-17-652. (a) It is an offense for any person to knowingly conduct more than one (1) annual event for the benefit of the same §501(c)(3) organization within the twelve-month period beginning July 1 following the application deadline and ending the next June 30.

(b) A violation of this section is a Class A misdemeanor; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000) per event in excess of the authorized annual event.

Section 39-17-653. (a) It is an offense for any person to knowingly conduct an annual event at a location other than the location, or locations, listed in a §501(c)(3) organization's annual event application pursuant to §3-17-103(a)(16).

(b) It is an offense for any person to knowingly conduct an annual event on a date not authorized pursuant to Title 3, Chapter 17, Part 1.

(c) A violation of this section is a Class C misdemeanor; provided, however, that the maximum fine shall be ten thousand dollars (\$10,000).

Section 39-17-654. (a)(1) It is an offense for any person to knowingly engage in gambling promotion under the pretense of conducting an annual event.

(2) A violation of this subsection is a Class E felony; provided, however, that the maximum fine shall be the greater of:

(A) Fifty thousand dollars (\$50,000); or

(B) The amount of gross proceeds derived from the gambling activity.

(b)(1) It is an offense for any person authorized to conduct an annual event to knowingly employ, contract with, or otherwise utilize the services of any person, management company or consultant to manage, conduct or operate an annual event.

(2) A violation of this subsection is a Class A misdemeanor; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000).

(c)(1) It is an offense for any person not authorized pursuant to Title 3, Chapter 17, Part 1, to knowingly manage, conduct or operate an annual event for a §501(c)(3) organization.

(2) A violation of this subsection is a Class D felony; provided, however, that the maximum fine shall be the greater of:

(A) Fifty thousand dollars (\$50,000); or

(B) The amount of the consideration obtained for the management, conducting or operation of the annual event.

Section 39-17-655. (a) It is an offense for any person to knowingly:

(1) Fail to file a financial accounting for an annual event as required pursuant to §3-17-105;

(2) Fail to timely file a financial accounting for an annual event as required pursuant to §3-17-105;

(3) Make a material false statement in any application, affidavit or statement made to the secretary of state in an application for an annual event; or

(4) Make a material false entry or statement in a financial accounting which is compiled for an annual event or which is submitted to the secretary of state for an annual event.

(b)(1) A violation of subsection (a)(1) is a Class B misdemeanor; provided, however, that the maximum fine shall be the greater of:

(A) Twenty-five thousand dollars (\$25,000); or

(B) The amount of gross proceeds derived from the annual event.

(2) A violation of subsection (a)(2) is a Class C misdemeanor; provided, however, that the maximum fine shall be the lesser of:

(A) Five thousand dollars (\$5,000); or

(B) The amount of gross proceeds derived from the annual event.

(3) A violation of subsection (a)(3) is a Class A misdemeanor; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000).

(4) A violation of subsection (a)(4) is a Class A misdemeanor; provided, however, that the maximum fine shall be the greater of:

(A) Fifty thousand dollars (\$50,000); or

(B) The dollar amount of the false entry or statement.

Section 39-17-656. (a) It is an offense for any person to falsely make, alter, forge, pass or counterfeit a ticket, share, chance or similar record for an annual event with the intent to defraud.

(b) It is an offense for any person to knowingly influence, or attempt to influence, the winning of a prize through the use of coercion, fraud, deception, or tampering with an annual event's equipment or materials.

(c)(1) A violation of subsection (a) is a Class A misdemeanor; provided, however, that the maximum fine shall be twenty-five thousand dollars (\$25,000).

(2) A violation of subsection (b) is a Class E felony; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000).

Section 39-17-657. (a) It is an offense for any person to knowingly sell or lease, or offer for sale or lease, facilities, locations, advertising services, printing services, telephone services, gambling records or gambling devices based on a percentage of the proceeds of an annual event or by any other contingency agreement based on the proceeds of an annual event or at a price greater than fair market value.

(b) A violation of this section is a Class E felony; provided, however, that the maximum fine shall be fifty thousand dollars (\$50,000).

Section 39-17-658. All tickets, shares, chances or similar records and other devices imported, transported, or distributed for an annual event operated pursuant to Title 3, Chapter 17, Part 1 are exempt from the provisions of 15 U.S.C. § 1172.

Section 39-17-659. The general assembly, by enacting §§ 39-17-651 - 39-17-658, intends to preempt any other regulation of the area covered by §§ 39-17-651 - 39-17-658 and Title 3, Chapter 17, Part 1. No political subdivision or agency may enact or enforce a law, ordinance, resolution, or regulation that regulates or prohibits any conduct in the area covered by §§ 39-17-651 - 39-17-658 and Title 3, Chapter 17, Part 1.

SECTION 10. Tennessee Code Annotated, Title 3, Chapter 15, is amended by adding the following language as a new part:

Section 3-15-1001. (a) There is hereby created a select oversight committee of the general assembly to be known as the Charitable Gaming Oversight Committee.

(b) The oversight committee shall be composed of six (6) members. Three (3) senators, one (1) from each grand division, shall be appointed by the Speaker of the Senate. Three (3) representatives, one (1) from each grand division, shall be appointed by the Speaker of the House of Representatives. During the organizational session of each general assembly, the respective speakers shall appoint, or reappoint, members to serve on the oversight committee. The committee shall elect from its membership a chair, a vice chair and such other officers as it considers necessary. Any vacancies occurring on the oversight committee, between organizational sessions, shall be filled in the same manner as the original appointments by the respective speakers.

(c) The oversight committee, at the call of the chair, shall periodically review and evaluate the operation of the Tennessee Charitable Gaming Implementation Law.

SECTION 11. (a) The secretary of state is authorized to promulgate rules and regulations as the secretary of state may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the secretary of state is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 12. (a) The Tennessee Claims Commission is authorized to promulgate rules and regulations as the commission may deem necessary to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(b) Notwithstanding the provisions of §§ 4-5-208 and 4-5-209 or any other provision of law to the contrary, the Tennessee Claims Commission is authorized to promulgate public necessity rules and emergency rules to implement the provisions of this act.

SECTION 13. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the


act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: April 5, 2004



JOHN S. WILDER
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 7th day of April 2004



PHIL BREDESEN, GOVERNOR